# LAW & REFORMS IN INDIA BANKRUPTCY

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## ABSTRACT

The current study examines the evolution of bankruptcy reforms in India through time, as well as the effectiveness of these changes since they were first implemented in the country. There is an attempt to address the current state of cross-border bankruptcy legislation and process in India, as well as how it affects foreign creditors who invest in Indian firms. To make it more applicable to current circumstances, all of this is extended with the use of a hypothetical scenario, which also serves to demonstrate the cumulative impact of past and currently in effect legislation.

**KEYWORDS:** Bankruptcy, India, Legal.

## INTRODUCTION:

**Situation:** Alpha Developers, the country's largest real estate developer. The firm has about 5000 people, including architects, a construction crew with mining equipment, and self-sufficient facilities. It was accepting investments from all around the world and using them to make substantial profits. During the COVID-19 epidemic, the real estate market was sluggish, and land was inexpensive. They anticipated that after the epidemic is gone, the firm may launch its initiatives and double the capital many times.

But the epidemic lasted longer than expected, and by 2025, the company's income was at an all-time low, with little hope of producing revenue in the future, and creditors demanding their money back. To cover its operational expenditures, the firm takes out loans from multiple banks, which are then labelled non-performing assets.

Creditors, including workers, investors, and banks, are stuck with money and demand it back. However, the firm lacks cash to refund the investment, so the investors file for bankruptcy. The World Bank rates member nations based on characteristics that are critical for starting up, establishing, and doing business in a country. This includes starting a firm, obtaining licences, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, resolving insolvency, and contracting with the government.1

Strict regulations and an accessible legal system entice international investors and contribute to the country's credibility. Foreign investors are constantly at risk, and there are numerous factors to consider before investing abroad. Thus, such regulation protects creditors' rights.

## HISTORY OF INSOLVENCY AND BANKRUPTCY LAWS IN BRITISH INDIA AND INDEPENDENT INDIA:

Insolvency law in India is derived from English law. Prior to the arrival of the British, India lacked an indigenous insolvency law. 2 The legislation enacted in the sixteenth century and later years provided only rudimentary bankruptcy protections. Following that, the British Parliament passed Bankruptcy Acts in 1849, 1869, 1883, and 1914. In India, the requirement of insolvency law was initially recognised in places where the British conducted significant commerce, namely Bombay, Calcutta, and Madras. In 1828, India approved Statute 9 (Geo IV c. 73), which is credited with initiating the country's insolvency legislation. Originally meant to last four years, the enactment was later prolonged until 1848. This Act created the first bankruptcy court in the Presidency cities, presided over by a Supreme Court judge, for the relief of insolvent debtors. Previously, the insolvency court met on an as-needed basis. In 1848, the Indian Insolvency Act was enacted along the lines of the English Bankruptcy Statutes to resolve disputes between insolvent debtors and to facilitate peaceful agreements. Following the 1861 implementation of The Indian High Court Act, all presidency towns were dissolved and the present-day High Courts were established, with jurisdiction over insolvency matters.

While the Presidency towns had their own insolvency legislation, the Mofussil regions lacked such legislation. In 1877, an attempt was made, and an amendment to the CPC of 1877 was made in the shape of several rules in Chapter 20. This empowered District Courts to hear and decide insolvency applications. The Mofussil area is governed by the Provincial Insolvency Act, 1920. 3 The 1848 Act was determined to be insufficient to address changing circumstances, and the Presidency Towns Insolvency Act, 1909 was established to deal with individual and corporate insolvency and bankruptcy. This law conferred authority to the Single Judge4 of the High Court over the Specific Presidency Towns of Bombay, Calcutta, and Madras.

The Presidency Act provided for the appointment of an officer known as the Official Assignee in each of the Presidency Towns 5 to whom all the insolvents' property was vested, and the Provincial Insolvency Act provided for the appointment of an official receiver u/s57 who was not required to be appointed. Where an Official Receiver was not appointed, a Bar member was appointed as Receiver on an ad hoc basis, and where no receiver was appointed, the property vests in the court. Due to the inconvenient nature of such vesting, it was decided to eliminate the system and to implement the method outlined in the Presidency Towns Act throughout India. Two clauses of the Indian Acts are pertinent: Section 7 of the Presidency Act and Section 4 of the Provincial Act. In the case7, the Calcutta High Court decided that the insolvency court should reject to consider claims against third parties who do not assign their claims to the bankruptcy. Numerous High Courts have taken a similar interpretation under the Provincial Act. 8 These two statutes were in effect until recently, when they were abolished by the I&B Code.

In 1981, in response to disease in the country's industrial climate throughout the 1980s, the Government of India established a committee of specialists chaired by Shri T. Tiwari. The committee's recommendations resulted in the 1985 enactment of the Sick Industrial Companies Act. The Act's primary goal was to establish illness and accelerate restoration. SICA is applicable to both private and public sector entities that possess Industrial Undertakings as defined in the First Schedule of the Industrial Development Regulations Act, 1951. Sick industries are those that have operated for five years and experienced a total loss equal to or more than their net value at the conclusion of the fiscal year.

This Act was subsequently abolished in 2003. List II entry 32 is concerned with the "incorporation, regulation, and winding up of corporations not listed in List I. With these provisions, The Companies Act, 1956 became the first piece of Insolvency Legislation. However, the Act included no reference to a corporation's insolvency or bankruptcy; rather, it made reference to its 'inability to pay'. As time progressed, many Acts were enacted, including the RDDFI Act 1993, the SARAFESI Act 2002, and the Companies Act, 2013. The SICA was repealed on December 1, 2016 by the Sick Industrial Companies (Special Provisions) Repeal Act, 2003. (Repeal Act). As a result, the BIFR and other entities established under the SICA have been dissolved. The Code's lengthy journey began in 1999, when a commission chaired by Justice V.B. Eradi was established to evaluate and suggest modifications to current legislation governing corporate winding up and liquidation. A report was produced recommending that jurisdiction and powers be transferred from the High Courts to a distinct National Tribunal. The Companies (second amendment) Act, 2002 was enacted, resulting in the establishment of the NCLT and NCLAT. As a first stage, a consultation process was initiated, during which a concept paper in legislative format was released and received several evaluations and comments.

The Government determined that the concept paper's suggestions should be evaluated by a separate committee, and therefore a new committee was created under the chairmanship of Dr.J.J Irani. The group recommended that a neutral forum be established with competence in commercial and technical elements of insolvency law. 10 Additionally, the committee recommended that the insolvency procedure be applicable to all enterprises and corporate entities, including MSMEs, with the exception of banks, financial institutions, and insurance companies.

Additionally, the group recommended that sick industrial firms be replaced with bankrupt ones and that creditors and debtors alike have equitable access to the insolvency system upon demonstrating proof of default.

Following the 2013 modification to the Companies Act, provisions were made for the establishment of the NCLT and NCLAT. Bankruptcy Law Reforms Committee was established in 2015 under the Chairmanship of Dr. TK Viswanathan with the primary objective of examining existing policies and developing a consistent framework for insolvency and bankruptcy of individuals and legal organisations. The committee delivered its findings to then-Finance Minister Late Shri Jaitely in November 2015. On 21st December 2015, Shri Jaitely introduced the code in Loksabha, which was referred to the Joint Parliamentary Committee on 23rd December 2015; the committee submitted its report to Loksabha on 5th May 2016, and the code was passed in Loksabha on 5th May 2016. Additionally, the code was introduced in the Rajya Sabha on 11th May 2016 and passed with a majority. The code got presidential assent on May 28th, 2016, at which point it became an Act. On December 1, 2016, the IBC, 2016 took effect. The Apex Court affirmed the code's constitutionality.

**NEW REFORMS:**

The Insolvency and Bankruptcy Code, 2016 was created to address inefficient rules and attract international investors. According to the code, any creditor can submit an application against the corporate debtor before the adjudicating body, regardless of whether they are financial or operational creditors. This single legislation supersedes all bankruptcy laws and creates a single code for insolvency procedures in India. This code has given creditors authority over assets. The Committee of Creditors (only financial creditors are members of this committee) supervises the firm as a continuing concern and assets of the company to safeguard their disposal by the debtor in any form. The Code requires a time-bound decision, which must be completed within 180 days following the Adjudicating authority's admission of the application. The time of 180 days is not defined and may be extended once by the adjudicating body if the Committee of Creditors is pleased. Then the liquidation order is issued.

According to the Code, the Alpha Developers must be liquidated within 9 months of the beginning of proceedings, and must be finished within a month after the order of liquidation. A liquidation procedure must be finished within a year. So it will depreciate very little or not at all, and be shielded from inflation. The Supreme Court has ruled that CIRP procedures under section 12(3) of the Code cannot be extended beyond 330 days, save in extraordinary situations. This was a non-mandatory earlier phase. 10 This will assist shorten the insolvency time. India jumped from 100th in 2017 to 63rd in 2020, with a quicker resolution procedure playing a key impact. This settlement procedure protects the creditor's interest while recovering capital investment with little or no loss due to inflation and depreciation. Smaller firms, start-ups, and unlisted companies with assets under Rs 10 crore can now choose for the Fast track resolution process. The Fast-track Corporate Insolvency Project must be completed within 90 days after the beginning of the Insolvency under Section 56 of the Code. If the committee of creditors requests a 90-day extension, an application must be submitted with the Adjudicating Authority.

If the fast-track CIRP cannot be completed within 90 days, the adjudicating body might prolong the procedure. This extension can only be granted once and for a duration of 45 days. 13 This brings the resolving process to 135 days. This can help start-ups and small local companies receive the finance they need. This will attract small investors from other countries as they will invest less and recover losses quickly. Since IBC offers for rapid recovery and such effective ways, why is it being suspended? The epidemic forced a global lockdown, which harmed economy. Many industries lost money because they had to close overnight.

In the event of insolvency, the company's assets are handed to the Committee of Creditors, who selects a Resolution Professional. This resolution expert replaces the board and takes possession and control. The Debtor loses control or ownership of the firm. In the aforementioned scenario, if the Alpha developer lost money during the pandemic, the assets could not be liquidated at their true worth and would have been sold for less, resulting in a loss and a lower recovery rate. Out of 1809 firms, 955 were liquidated in the newsletter, with the rest still waiting at NCLT. As a result, the Code had to be temporarily suspended.

In the given scenario, where will the creditor apply for insolvency, and if so, would the foreign court recognise it? The Indian and international courts will have overlapping jurisdiction. In the matter of Solomons v Ross16, a Dutch business was declared bankrupt and an English creditor sought for recovery before the English Court. It was decided by the English court that since the Dutch company's assets were attached, he should seek the Dutch court. In Galbraith v. Grimshaw17, the English court decided that only process should be administered and the case should be heard by one court, not many. The code deals with cross-border insolvency19, but this takes time since it needs regular consultation with the foreign authorities. This violates the aim of the code, which is to speed up insolvency.

**CONCLUSION:**

Because creditors are primarily people who invest in or offer services to them, insolvency and bankruptcy laws play an essential role in protecting the interests of creditors and creditors' rights. Furthermore, research has demonstrated that a country with effective insolvency reforms that encourage debt restriction and reorganisation reduces the failure rate, i.e., the likelihood of being insolvent among small and medium-sized enterprises and the likelihood of liquidating profitable businesses that are still in operation. Because it will provide a better and more effective legal system, particularly for the insolvency process, India has been concentrating on and continuously reforming its code. An efficient recovery system, which has increased the recovery rate, allows creditors to invest because it allows them to recover more money faster. Despite the fact that bankruptcy rules in many countries are similar, there are instances in which the two jurisdictions cannot agree on the jurisdiction and distribution of assets when deciding on the jurisdiction and distribution of assets. This increases the time required for resolution and, as a result, decreases the efficiency of the process. The consequences of this delay, as well as the inefficiency of the legal system, are borne by the creditor, regardless of whether they are financial or operational in nature. These are the factors that tend to encourage resolution and discussion outside of the courtroom, and this surely raises the risk that the creditor must bear if the debtor defaults on his or her obligations to the creditors. 21 It is via this process that the legal system of a country loses its value as individuals seek alternative means of avoiding financial hardship. A case in point is Brazil, where variations in the Court's interpretation and execution of the same bankruptcy legislation influenced and had an impact on financial reforms affecting access to size, financing, and investment For example, consider the situation in India, where the companies were being run by the promoters during the observation period, and as a result, the creditor was only obligated to observe and wait, as no other recovery proceedings could be initiated before any Court during the period of observation. Thus, the financial creditor loses interest in the transaction and raises the risk, which eventually lowers the country's position on the Ease of Doing Business Index. It is undeniable that the new reform would significantly improve India's rating and aid the country's economic development.

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